

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., AT DEVANAHALLI.**

PRESENT

**SRI. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this day of 12th April,2023.

O.S.No.22/2009

1. Jayamma, : **Plaintiffs**
Since dead by LR's,
- 1.(a)BYREGOWDA,
S/o late.Kempanna,
Aged about 40 years,
- 1.(b) GANGEGOWDA,
S/o late. Kempanna,
Aged about 38 years,
- 1.(c) RAVIKUMAR,
S/o late.Kempanna,
Aged about 36 years
All are R/at: Ankonahalli Village,
Sulibele Hobli,
Hosakote Taluk.
2. PARVATHAMMA,
D/o late. Uthanallappa,
Aged about 43 years,
R/at: Gangavara Village,
Channarayapattana Hobli,
Devanahalli Taluk.

(Plt. - By Sri. M.K.G., Advocate)

- V/s. -

1. MUNIKEMPAIAH, : **Defendants**
Dead by LR's,
 - 1.(a) VISHWANATH,
S/o late. Munikempaiah,
Aged about 35 years,
R/at: Bhattaramarenahalli Village,
Channarayapattana Hobli,
Devanahalli Taluk.
 - 1.(b) INDRAMMA @ INDRANI,
D/o late. Munikempaiah,
W/o. Srinivas,
Aged about 33 years,
R/at: Chakondanahalli Village,
Thubugere Hobli,
Doddaballapur Taluk.
 - 1.(c) RENUKAMMA,
D/o late. Munikempaiah,
W/o. Sathish,
Aged about 31 years,
R/at: Jalahalli Village,
Bangalore.
2. VIJAYALAKSHMI,
W/o.Munikempaiah,
Aged about 51 years,
3. PILLAMMA,
D/o late Uthanallappa,
Aged about 67 years,
R/at: Beerasandra Village,
Kundana Hobli,
Devanahalli Taluk.

4. PUTTARATHNAMMA,
D/o late Uthanallappa,
Aged about 57 years,
Kalanayakanahalli Village,
Jangamakote Hobli,
Shidlagatta Taluk.
5. LAKSHMAMMA,
D/o late Uthanallappa,
W/o. Krishnappa,
Aged about 52 years,
R/at: Ramagondanahalli Village,
Yelahanka Hobli,
Bangalore North Taluk.
6. M.K. VEERENDRA BABU,
S/o Munikempaiah,
Aged about 32 years,
7. RAMAKKA,
Died
Defendant No.1,2,6 are all
R/at: Bhattaramarenahalli Village,
Channarayapattana Hobli,
Devanahalli Taluk.

(Def.1(a)-1 to 8 - By Sri.
K.S.S., Advocates)
(Def.2,6,7.- By Sri.
K.T.N.R., Advocates)

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ORDERS ON I.A.No.32

The plaintiffs have filed I.A. No.32 U/o.39 Rule 1 & 2 of C.P.C, seeking to restrain the defendant No.1(a), 2 and 6 from alienating the suit schedule properties during pendency of suit.

2. Facts of case are unfurled here under : It is pleaded by the plaintiffs that, they themselves and defendants constitute Hindu undivided joint family being lineal decedents of one Bachanna. The said Bachanna died leaving behind 3 sons namely Appajappa, Uthanallapa and Byrappa. The said Appajappa and his wife Kempamma died without any issues. The said Uthannallappa and his wife Kempamma died leaving behind themselves and defendants No.1,3 to 5 as their childrens. They themselves and defendants No.1,3 to 5 are the childrens of said Uthanallappa and Kempamma. The defendant No.2 is the wife of defendant No.1 and defendant No.6 is the son of defendant No.1. The said Byrappa died leaving behind his widow Ramakka who is defendant No.7 herein. Therefore they have contended that, they themselves and defendants No.1 to 7 constitute Hindu undivided joint family. According to them the suit properties are joint family properties of themselves and defendants No.1 to 7. The defendant No.1 is the kartha of joint family. They requested the defendants to effect partition and separate possession of their share over the suit properties as the defendant No.1 was misusing the income of suit properties. The defendants refused to effect partition and separate possession of their share. They came to know that, the defendants No.1 and 7 created partition deed dated 21-08-2008 in between them. Therefore the said partition deed is not binding on them. Hence they seek to effect partition and separate possession of their share over suit properties.

3. The defendant No.4 has filed written statement by admitting the suit claim. She also requested to effect partition

and separate possession of her share over the suit properties. The defendants No.1,2 and 6 have filed common written statement by denying the claim of plaintiffs over suit properties. According to them the suit item No.9 to 14 properties are the joint family properties. The suit schedule item No.5 to 8 are the exclusive properties of defendant No.1 who has acquired the same under registered sale deed and grant on his individual capacity. The suit item No.1 to 3 properties have been regranted in the name of Appajappa, Byrappa and Lakshamma. The plaintiffs have no rights over the suit properties. They further contended that the defendant No.5 has filed suit bearing O.S.No.385/2008. In the said suit the plaintiffs are also parties. The said suit ended in compromise and defendant No.5 Lakshamma has received an amount of Rs.41,00,000/- through cheque drawn in favour of her son Sampangi. Similarly the plaintiffs and defendants No.2 to 4 have also received cash of Rs.10,00,000/- each and agreed to relinquish their rights over suit properties. The defendant No.3 has executed registered release deed on 22-02-2009. The plaintiffs and defendants No.2 and 4 have failed to execute registered release deed. Therefore the plaintiffs and other defendants have no rights over the suit properties. The suit item No.9 to 14 properties have already been divided under registered partition deed dated 21-08-2008. Therefore the plaintiffs are not entitled to the relief of partition and separate possession of their share over suit property as sought by them. Hence they seek to dismiss the suit.

4. Based on rival contentions of parties, this court framed in all six issues including the issue of existence of joint family and joint family properties and entitlement of share. The plaintiff No.1(a) led evidence as P.W.1 and tendered in all 107 documents at Ex.P.1 to P.107. When the case posted for cross examination of P.W.1, the present application has been filed by plaintiff U/o.39 Rule 1 and 2 of C.P.C seeking to restrain the defendant No.1(a), 2 & 6 from alienating the suit properties. The plaintiffs have alleged that, the defendants are trying to alienate the properties. Hence they seek to restrain the defendants No.1(a), 2 and 6 from alienating the suit properties. The defendant No.1(a), 2 and 6 have filed objections to the said application by contending that, the similar application filed by plaintiffs at I.A. No.2 is still pending & present application is not maintainable. Therefore the plaintiffs are not entitled to seek injunction against them. They have also contended that, the suit properties are not the joint family properties. They also contended about acceptance of cash of Rs.10,00,000/- by the plaintiffs and agreeing to relinquish their right over suit properties. Hence they seek to reject the application. Hared counsel for plaintiff and defendants No.1(a), 2 and 6.

5. Having heard, the following points would arise for my consideration:

1. Whether the Plaintiffs made out prima-facie case for issuance of injunction ?

2. Whether the Plaintiffs prove that, the balance of convenience lies in their favour?
3. Whether the Plaintiffs prove that, if injunction is refused, they would be put to irreparable loss which cannot be compensated in terms of money?
4. What order?

6. Having heard and having perused the material on record, my findings to above points is as under :

Point Nos.1 to 3 : **In the Affirmative.**

Point No.4 : **As per final Order for the following :**

REASONS

7. Point Nos.1 to 3 : In order to avoid the repetition of facts, these points are taken together for common consideration. It is the assertion of plaintiffs that, they themselves and defendants constitute Hindu undivided joint family being lineal descendants of one Bachanna and Puttamma. The said Bachanna and Puttamma died leaving behind three sons namely Appajappa , Uthanallapa and Byrappa. The said Appajappa and his wife Kempamma died issueless. The said Byrappa died leaving behind defendant No.7 as his widow. The said Uthanallappa and his wife Kempamma died leaving behind plaintiffs and defendant No.1, 3 to 5 as their heirs. The defendant No.2 is the wife and defendant

No.3 is the son of defendant No.1. Therefore they claimed that, they themselves and defendants constitute Hindu undivided joint family. They have also claimed that, they suit properties are joint family property of themselves and defendants. The defendant No.4 has supported the case of plaintiff. The defendants No.1(a), 2 and 6 have objected the claim of plaintiff over suit properties by contending that, the plaintiffs have accepted cash of Rs.10,00,000/- each and agreed to relinquish their right over suit properties. They have also contended the suit item No.5 to 8 properties are self acquired property of defendant No.1. They have also contended that, the defendant No.3 and 5 have already relinquished their right over suit property. Therefore they seek to dismiss the suit.

8. Based on rival contentions of parties, the following undisputed facts can be culled out hereunder :

1. It is not in dispute that, original propositus Bachanna and Puttamma have died leaving behind three sons namely Appajappa , Uthanallapa and Byrappa.
2. It is also not in dispute that, the said Appajappa and his wife Kempamma died is sules.
3. It is also not in dispute that, the third son of Bachanna namely Byrappa died leaving behind defendant No.7 as his widow.

4. It is also not in dispute that, the plaintiffs and defendant No.1(a) 3 to 5 are the children of Uthanallappa and Kempamma. Therefore there is dispute between parties is in regard to in relationship pleaded by the plaintiff.
5. It is also not in dispute that, the suit item No.9 to 15 properties are ancestral properties of said Bachanna and his lineal descendants.
6. It is also not in dispute that, the suit item No.1 to 3 properties have been regranted in the name of Appajappa, Byrappa and Lakshamma.

9. The only dispute between parties is in regard to relinquishing of right by the plaintiffs by accepting cash of Rs.10,00,000/- each. Therefore with this back drop of disputed and undisputed fact I proceed to examine the material placed by the parties. As indicated above the plaintiff No.1(a) has led evidence as P.W.1 and tendered in all 107 documents at Ex.P.1 to 107. Admittedly the registered partition deed dated 21-08-2008 indicate that, the defendants No.1 and 7 have entered into partition. As on the date of entering of said partition, the Hindu succession amendment Act of 2005 was came into effect wherein the rights of daughters have been recognized on par with the male children. Therefore as on the date of entering of said partition, the plaintiffs have the right over suit properties. The said partition was entered soon before filing of present suit. The faith

of said partition deed has to be decided in the full pledge trail. The contention of defendants No.1(a) 2 and 6 about acceptance cash of Rs.10,00,000/- each by the plaintiffs and agreeing to relinquish right over suit properties also need to be considered in the full pledge trail. Admittedly there is no material forthcoming from the defendants that, the plaintiffs have relinquished their rights over suit properties by executing legally acceptable document. Therefore in the light of relationship pleaded by the parties and in the light of assertion and denial of right, I hold that, properties have to be saved from alienation. If the defendants succeeded in alienating the property, it may create hurdle to the plaintiffs in agitating their rights over suit properties. Therefore keeping open the rights of parties I hold that, the plaintiffs have made out prima facie case for issuance of injunction. If the defendants succeeded in alienating the property it may create hurdle to the plaintiffs in agitating their rights. Therefore in order to protect the interest of both the parties over subject matter of suit, and to protect the property for trail I hold that, the plaintiffs have made case for issuance of injunction. Therefore I hold point Nos.1 to 3 in the Affirmative.

10. Point No.4 : In the light of aforesaid finding on the above said point, I proceed to pass the following :

ORDER

The I.A.No.32 filed by the plaintiff U/o.39 Rule 1 & 2 of C.P.C. is hereby allowed and the defendant No.1(a), 2 and 6 are temporally restrained from

alienating the suit properties till disposal of suit.

Call on: 10-07-2023 for cross examination of P.W.1.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 12th Day of April 2023).

**(SRI. PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**